

AGENDA ITEM NO.

1E

COUNCIL MEETING

12/18/07

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 18, 2007

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: JEFFREY MOTOYASU, Lieutenant
Special Operations Division

SUBJECT: AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO A THREE-YEAR CONTRACT WITH TURBOMECA USA FOR MAJOR ENGINE MAINTENANCE AND OVERHAUL EXPENSES ASSOCIATED WITH THE TURBINE HELICOPTER ENGINE IN THE EUROCOPTER EC120

KEY RESULT AREA

Public Safety.

RECOMMENDATIONS

It is recommended that the Council authorize the Chief of Police to enter into a contract for the maintenance and overhaul support program with Turbomeca known as Support by the Hour (SBH). The Police Department's helicopter engine is manufactured by Turbomeca.

EXECUTIVE SUMMARY

The Police Department is prepared to enter into a three-year contract with Turbomeca, which will provide Support by the Hour for one EC120 helicopter Arrius 2F engine. The Arrius 2F engine will be the only item covered under the contract for major engine maintenance and overhaul expenses. The contract requires Turbomeca to ship replacement parts within 24 hours while our original engine parts are being repaired during scheduled or unscheduled maintenance on the Arrius 2F engine. Once the contract is adopted, the Police Department would pay Turbomeca a set rate per the hours flown. Turbomeca then warrants the Arrius 2F engine for all anticipated and unanticipated costs associated with the engine during the life of the contract.

KEY OBJECTIVE BALANCE

The contract with Turbomeca balances the three key objectives of prudent Financial Management, Employee Satisfaction, and Customer Satisfaction by providing fixed costs at a guaranteed rate to maintain the helicopter's engine. The employees and customers will have a safe and reliable helicopter that will be available for calls for service.

BACKGROUND

In July of 2003, the Fresno Police Department took delivery of a Eurocopter EC120 Turbine Helicopter. The City of Fresno entered into a contract with Turbomeca for Support by the Hour, which would be effective until the engine accumulated 2,800 flight hours. The engine has now accumulated over 2,800 flight hours and was

overhauled in November 2007. Therefore a new agreement is needed due to the expiration of the former contract. Turbomeca USA, is the only company in the United States authorized by the Federal Aviation Administration and Eurocopter to perform the overhaul. The 3 year contract will cost \$109,297 in FY-08; \$136,500 in FY-09; and \$150,562 in FY-10.

The maintenance program contract, in part, has allowed the Department to ensure that one helicopter is available at all times for patrol over the City. Parts, equipment and assistance are provided immediately by Turbomeca to repair the engine, which reduces the time the helicopter is unavailable.

A well-maintained helicopter has reduced response times for calls for service, which provides for a safer community for the citizens of Fresno.

FISCAL IMPACT

There is no fiscal impact in FY-08 as these costs have been previously budgeted within the Police Department's asset seizure fund (assets derived from narcotics investigations).

JPD:JM:pgh
12/06/07

Attachment: Agreement/contract between Turbomecha and the City of Fresno

CITY OF FRESNO POLICE DEPARTMENT AIR SUPPORT UNIT

**SUPPORT BY THE HOUR MISSION CONTRACT
PARAPUBLIC PRIME WITH LENDING
FOR TURBOMECA GAS TURBINE
ARRIUS 2F ENGINE SERIAL NUMBER 34334
INSTALLED ON AIRCRAFT SERIAL NUMBER 1309**



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This *Support By the Hour* Agreement ("Agreement") is made as of the _____ day of _____, 2007 by and

Between: **TURBOMECA USA, INC. ("TMUSA")** a Delaware Corporation with its principal office at:

2709 Forum Drive

Grand Prairie, Texas 75052

Telephone: (972) 606-7600

Facsimile: (972) 606-7692

Represented by: **Mr. J. Russell Spray**

In his capacity of: President and Chief Executive Officer

On the one hand,

And **CITY OF FRESNO**, a municipal corporation ("Customer") with principal offices at:

2600 Fresno Street

Fresno, California 93721

Telephone: 559 621-2200

Facsimile: 559 498-5168

Represented by: **Chief Jerry Dyer**

In his capacity of: Chief of Police, Fresno Police Department

On the other hand,

Hereinafter collectively referred to as "the Parties".


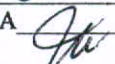
WHEREAS, TMUSA is engaged in the business of providing depot level maintenance of aeronautical engines; and

WHEREAS, Customer desires to limit major engine maintenance and overhaul expenses and TMUSA desires to provide the opportunity to Customer to limit major engine maintenance and overhaul expenses through the assessment of monthly charges based on a fixed rate for each hour of equipment operation or operational cycle; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth in this Agreement; the receipt and sufficiency of which are hereby acknowledged, TMUSA and Customer hereby agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1. "ACCESSORY" means any Engine accessory or item of Equipment as defined in Exhibit I.
- 1.2. "AIRCRAFT" means the EC120 aircraft that Covered Equipment is installed in.
- 1.3. "AIRCRAFT ON GROUND (AOG)" is a situation where the Equipment is unable to remain in service or is ineligible for return to service.
- 1.4. "CONSUMABLES" means all expendable material, non-repairable components such as, but not limited to, nuts, bolts, sheet metal work, fuel and lubricants or low-cost parts such as, but not limited to, packing, gaskets, seals filters, etc.
- 1.5. "CORE UNIT" means Equipment that must be returned to TMUSA. This Equipment can be the Customer's Equipment which is sent for Repair, the Equipment loaned by TMUSA or the repairable accessory in exchange to the one provided by TMUSA as Standard Exchange Equipment.
- 1.6. "COVERED EQUIPMENT" means the Equipment specified in Exhibit I hereto and other Equipment included as Covered Equipment in accordance with Article 2.2 hereof.
- 1.7. "CYCLE" denotes an operation gas generator cycle as reported in the Engine Log Book, in accordance with TURBOMECA instructions as outlined in the Engine Maintenance Manual held by the Customer. Cycles are recognized since the last general overhaul (CSO) and since new (CSN).
- 1.8. "EQUIPMENT" denotes according to context, an engine, a module, an accessory, LRU or a spare part, and includes any component part thereof.
- 1.9. "FOREIGN OBJECT DAMAGE (FOD)" means damage to the Engine resulting from the ingestion of any foreign object.
- 1.10. "LIFE-LIMITED PART" means a part which must be changed after its service life has expired.
- 1.11. "LRU" denotes any engine Line Replacement Unit or item of Equipment as defined in Exhibit I hereto.
- 1.12. "MANDATORY MODIFICATIONS" are modifications required by a mandatory Service Bulletin from TURBOMECA, modifications required by TURBOMECA's suppliers or required by the Airworthiness Authorities. In any case, Mandatory Modifications are limited to the Equipment covered by this Agreement.
- 1.13. "MODULE" denotes a sub-assembly of the basic engines as described in the Engine Maintenance Manual.
- 1.14. "ON CONDITION EQUIPMENT" shall refer to Equipment which is not subject to TBO.
- 1.15. "OPERATING HOURS" denotes an hour of operation as recorded in the Engine Log Book in accordance with TMUSA instructions as outlined in the Engine Maintenance Manual held by the Customer. Operating hours are recognized since the last general overhaul (TSO) and since new (TSN).
- 1.16. "OVERHAUL" whether scheduled or unscheduled, shall mean the work required which will enable the Equipment to begin a new Time-Between-Overhaul ("TBO") period.



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- 1.17. "REFERENCE DOCUMENTS" denotes the following TURBOMECA documents, and any amendments thereto collectively, "Reference Documents":
- 1) Engine Maintenance (field or modular maintenance),
 - 2) Service Letters,
 - 3) Turbomeca Service Bulletins,
 - 4) Maintenance Tools Catalog; and
 - 5) Maintenance Spare Parts Catalog.
- 1.18. "REPAIR" shall mean the work defined in TURBOMECA's Repair Manual which will enable the Equipment to return to service.
- 1.19. "SCHEDULED REMOVAL" means the removal of Equipment performed in accordance with the time intervals specified in the TURBOMECA Maintenance Manual.
- 1.20. "SERVICEABLE EQUIPMENT" means Equipment in airworthy condition.
- 1.21. "SPARE PART" denotes spare parts to be used for field and/or modular maintenance procedures. Authorized spare parts are identified in the Spare Parts Catalog issued by TURBOMECA.
- 1.22. "STANDARD EXCHANGE" denotes replacement of malfunctioning Covered Equipment with serviceable, repaired/overhauled repairable Equipment in working condition delivered from TMUSA stock irrespective of the previous operator, place of operation, reason for its being handed in, operating hours/cycles available, or modification standard.
- 1.23. "TBO" denotes Time Between Overhaul as defined in the Engine Maintenance Manual and Service Letters.
- 1.24. "TMUSA OWNED EQUIPMENT" denotes Equipment owned by TMUSA.
- 1.25. "TOOLS" are identified in the Engine Maintenance Tools Catalog.
- 1.26. "UNSCHEDULED REMOVAL" means the removal of Equipment performed outside the time intervals or limit intervals as specified in TURBOMECA's Maintenance Manual.

Note: Words used in the singular shall include plural and vice versa unless contrary intention should appear.

ARTICLE 2 – PURPOSE AND SCOPE OF THE CONTRACT

- 2.1. Purpose. The purpose of this Agreement is to specify the conditions under which TMUSA will provide to Customer, and Customer will obtain from TMUSA, maintenance and overhaul support for Covered Equipment (as hereinafter defined) at a fixed hourly or cyclical rate.
- 2.2. Scope. This Agreement applies only to the Covered Equipment. The inclusion as Covered Equipment of any Equipment not listed in Exhibit I hereto must be made in writing, and signed by TMUSA and Customer.
- 2.3. This Agreement does not cover the field maintenance described in TURBOMECA's Maintenance Manual and to be performed by the Customer.



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- 2.4. Property Rights in Covered Equipment. Covered Equipment that is removed from the Customer's helicopter remains the property of the Customer. Covered Equipment that is replaced on Customer's helicopter with Standard Exchange Equipment becomes the property of TMUSA and such Standard Exchange Equipment becomes the property of Customer.

ARTICLE 3 – DURATION

- 3.1. The term of this Agreement shall commence as of the date hereof, set forth in the initial paragraph of this agreement (the "Effective Date"), and shall remain in effect until the overhaul of each of the engines that are Covered Equipment to include the return and acceptance test flight (the "Completion Date"), unless terminated earlier in accordance with this Agreement.

ARTICLE 4 – CONDITIONS TO QUALIFY FOR THIS AGREEMENT

- 4.1. Similar Equipment. As a condition to this Agreement and subject to the termination provisions of this Agreement, Customer shall enter in a *Support By the Hour* Agreement with TMUSA for any and all Equipment owned or operated by Customer that is the same or similar to Covered Equipment during the life of this Agreement that is the same or similar to the Arrius 2F engine and manufactured by Turbomeca, S.A.
- 4.2. All Equipment entering into this Agreement shall be serviceable.
- 4.3. Non-Zero Time Engines and Modules. Subject to Article 11.6 of this Agreement, a Customer may enter into this Agreement with non-zero time Equipment if the prospective Covered Equipment has greater than fifty percent (50%) of its TBO remaining and the Covered Equipment is qualified by TMUSA. Qualification may consist of a power assurance check and inspection of the engines and modules by a TMUSA representative (at Customer's primary facility) to determine the current condition of the equipment, the results of which must be acceptable to TMUSA. If deemed necessary by TMUSA, all engine and module records must also be made available for review at TMUSA's primary facility, and must be acceptable to TMUSA after review and prior to coverage.

ARTICLE 5 – DEFINITION OF SERVICES

- 5.1. The services provided by TMUSA to Customer under this Agreement are as follows:
- 1) Repair of Equipment for unscheduled removals requiring Level 3 or 4 maintenance.
 - 2) Overhaul of Equipment to include replacement of life limited parts.
 - 3) Use of a rental engine at program hourly rate when required during repairs or overhaul of Covered Equipment.
 - 4) Complete Engine Maintenance.
 - 5) Standard Exchange of Repairable Accessories as appropriate to replace Repairable Accessories covered by this Agreement.
 - 6) Supply of consumables and non-repairable LRU's to include a provisioning at Customer's site.
 - 7) Transportation costs for shipment of engines and spare parts to Customer.



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- 8) Training of Mechanics.
 - 9) Use of special tooling.
 - 10) Spectrometric Oil Analysis Program test analysis.
- 5.2. Mandatory Bulletins. Mandatory modifications are included in the scope of this Agreement.
- 5.3. TMUSA may decide to perform maintenance at the Customer's primary facility which is not field maintenance as described in the Maintenance Manual to avoid the exchange or return of Covered Equipment to TMUSA. In the event TMUSA elects to perform maintenance at Customer's facility, TMUSA shall bear all related expenses for technician's labor and travel.
- 5.4. Premature Wear or Failure. In the event of a breakdown or deterioration of the Covered Equipment due to defects in design, material, or workmanship in the manufacture, repair or overhaul of the Covered Equipment ("Premature Wear or Failure"), TMUSA will replace or repair the Covered Equipment, provided, however, that the choice between replacement or repair of Covered Equipment shall be made at the sole discretion of TMUSA.
- 5.5. Repair or Replacement. In the event that any Covered Equipment reaches TBO or exhibits Premature Wear or Failure, TMUSA will, at its sole discretion and consistent with its obligations hereunder, determine the extent of repair or replacement required.
- 5.6. TMUSA's Right to Replace Parts. TMUSA reserves the right, at its sole discretion, to use new or serviceable used replacement parts in the course of repair or overhaul performed pursuant to this Agreement.
- 5.7. Force Majeure. TMUSA and Customer shall not be liable for a delay or failure to perform hereunder due to causes beyond its respective reasonable control, including but not limited to, fires, explosions, floods, earthquakes, embargoes, wars (declared or undeclared), riots, insurrections, or civil commotion.
- 5.8. Publications Revisions. TMUSA agrees to provide, at no additional charge, revision service for Turbomeca publications including the Engine Maintenance Manual, Spare Parts Catalog, Service Bulletins, Service Letters, and General Information Letters, for each year this Agreement remains in effect.
- 5.9. Technician Training. TMUSA agrees to provide customer one (1) position per year in the Arrius 2F Field Maintenance training course per engine enrolled. Customer is responsible for the technician's travel, transportation, lodging, meals and expenses incurred while attending the Field Maintenance Course at TMUSA.
- 5.10. Use of Special Tooling. TMUSA agrees to lend, at no additional charge, special engine tools to Customer for carrying out field and/or modular maintenance works described in the Engine Maintenance Manual for each year this Agreement remains in effect. Customer is responsible for repair or replacement of special engine tooling if lost or damaged due to misuse, abuse, or breakage while in Customer's possession. Customer agrees to promptly return special engine tools borrowed from TMUSA within three (3) days after completion of the field and/or modular maintenance.
- 5.11. Spectrometric Oil Analysis Program (SOAP). The Spectrometric Oil Analysis shall be performed as it is recommended in the Maintenance Manual (periodic inspection). Customer shall send the sample of the oil to be analyzed to TMUSA. TMUSA shall have the testing performed for the Spectrometric Oil Analysis and

send the results to the Customer. In the event Customer is requesting more Spectrometric Oil Analysis than the number recommended in the Maintenance Manual and not at the direction of TMUSA, the additional Spectrometric Oil Analysis tests shall be invoiced to Customer by TMUSA.

5.12. Exclusions. The following supplies and services are excluded from the scope of this Agreement:

- 1) Procurement of spare Equipment not covered elsewhere in this Agreement;
- 2) Supplying of fuels or lubricant materials (other than for Covered Equipment testing);
- 3) Purchase of spare equipment and tools for carrying out field and/or modular maintenance of the Covered Equipment;
- 4) Replacement of parts due to erosion corrosion or FOD;
- 5) Calendar inspections of modules, engines or accessories;
- 6) Carrying out field maintenance works to include engine removal described in the Engine Maintenance Manual; and
- 7) Non-mandatory modifications.

5.13. TMUSA may decide to perform maintenance work that is not field maintenance as described in TURBOMECA's Maintenance Manual at Customer's facility or base to avoid the return or exchange of Equipment to TMUSA's factory. This work will be performed by one of TMUSA's field technicians and in this case, TMUSA shall bear the related expenses.

5.14. Regarding the maintenance work not included in the scope of this Agreement, Customer may place an order to TMUSA to perform an intervention on site. Such intervention will be invoiced according to TURBOMECA's price list at such time.

5.15. Replacement Engine. In the event Customer's engine requires removal for scheduled or unscheduled maintenance, TMUSA shall supply Customer with an engine (TMUSA Owned Equipment) that is Serviceable Equipment to operate until Customer's module or engine is repaired or overhauled. TMUSA shall provide the engine for Customer's use at the current Fixed Hourly Rate then in effect as described in Article 11.1 of this Agreement. Customer shall be required to execute a Lease Agreement in substantially the form as attached hereto as Exhibit II and comply with all insurance requirements prior to the shipment of the engine or module. In the event an unscheduled removal should occur and TMUSA cannot supply a complete engine, TMUSA shall send a Field Mechanic at no cost to the Customer to replace affected modules to return the engine back to service. When Customer's modules have been repaired, TMUSA shall send a Field Mechanic to re-install Customer's modules on the engine at no cost to the Customer.

ARTICLE 6 – OBLIGATION OF THE CONTRACT HOLDER

6.1. Scheduled Removal. Customer is not entitled to remove serviceable Equipment for overhaul before the Equipment reaches the end of its TBO period.

- 1) Requests for use of a rental engine or module shall be sent at least sixty (60) days before the scheduled date of removal in writing to TMUSA.



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- 6.2. **Unscheduled Removals.** In the event of an Unscheduled Removal, Customer shall perform the relevant troubleshooting prior to removal. Removal of Covered Equipment without prior approval of TMUSA may result in Customer being responsible for all associated removal and maintenance costs for the removed Equipment if the removal cause is not confirmed by TMUSA.
- 6.3. **Field Maintenance.** Customer shall be responsible for field maintenance of Equipment covered by this Agreement and the Equipment shall be operated and maintained in accordance with TURBOMECA's Maintenance Manual and by using Tools as specified in such documentation. The following TURBOMECA documents of the latest amendment shall be used as reference:
- TURBOMECA's Maintenance Manual
 - TURBOMECA Service Letters
 - TURBOMECA Service Bulletins
 - Maintenance Spare Parts Catalogue of the Engine
 - Maintenance Tools Catalogue of the Engine.
- 1) Any maintenance operation performed by the Customer must be performed by technicians qualified by TMUSA. Technicians' qualification level must be compliant with TURBOMECA's Maintenance Manual.
- 6.4. **Reporting.**
- 1) **Monthly Report.** Each month Customer shall submit to TMUSA a written report, in the form of Exhibit III, incorporated by reference, of Covered Equipment's operation, as of the last day of the prior calendar month, including: beginning hours, run time, ending hours, CSO, CSN, TSO and TSN ("the Monthly Report"). The Monthly Report must be received by TMUSA by the tenth (10th) day of the month. In the event the Monthly Report is not received by TMUSA by the tenth (10th) day of the month, TMUSA will invoice Customer based on an average of previously reported hours and cycles flown. This invoice will be due within thirty (30) days from the invoice date. In the event and adjustment is required, the adjustment will be made during the next billing process once a Monthly Report is received from Customer.
- 2) **Notice of Incident.** Customer agrees to inform a TMUSA representative within twenty-four (24) hours of any incident occurring to, or caused by, the Covered Equipment or any TMUSA Owned Equipment in the custody of Customer and, as a general rule, of any situation which will or may result in injury, damage or loss to TMUSA's property in the custody of Customer. A written report shall be submitted as soon as practicable. Notice must precede return of any failed equipment to TMUSA.
- 3) **Notice of Modification.** The Customer agrees not to undertake any modification or carry out any servicing, maintenance or repair to TMUSA Owned Equipment, components or Covered Equipment which is not provided for in the Reference Documents for the specific equipment, without prior written agreement and approval by TMUSA. Such agreement and approval shall not be unreasonably withheld.
- 4) **Recordkeeping.** Covered Equipment or component documentation such as log book, module sheets and component log cards will be fully maintained in an up-to-date status by Customer. TMUSA will update the module sheets and component log cards, if required and as required, after a repair event is performed.



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- 5) Operation and Maintenance Records. Customer shall keep records of Covered Equipment operation, maintenance and running time, and shall permit TMUSA to inspect and copy such records as any reasonable time upon request.
- 6) Change of Ownership and Liens. Customer shall not, except in compliance with Article 14.1 herein, make or suffer to be made any change in the ownership, leasehold, operational interest, or financial interest or utilization of the Covered Equipment or any aircraft on which Covered Equipment is installed without prior written notice to and written approval by TMUSA. Customer shall not do any act that would result in the imposition of any lien, security interest, or other encumbrance on any TMUSA Owned Equipment.

6.5. Insurance.

- 1) Preservation of TMUSA Owned Equipment. Customer agrees to safely keep, carefully use, and keep in good mechanical and working condition at all times any and all TMUSA Owned Equipment with which Customer is entrusted.
- 2) Insurance in Transit. Customer agrees to provide and maintain ALL RISK PHYSICAL DAMAGE INSURANCE in the amount of full replacement value for all TMUSA Owned Equipment or supplies while in the custody of Customer or in transit to TMUSA. Such insurance is to take effect at the time and place of shipment to TMUSA and shall remain in effect until delivery of said property to TMUSA.
- 3) Insurance In Use. Customer further agrees that during such time any TMUSA Owned Equipment or supplies are installed in Customer's aircraft, Customer shall maintain the following:
 - a) ALL RISK GROUND AND FLIGHT HULL INSURANCE thereon in an amount sufficient so that TMUSA will recover fully the amount of any loss of said Equipment or supplies.
 - b) Customer shall also maintain at all times Aircraft and Bodily Injury and Property Damage Insurance, including Passengers, in an amount of at least \$20,000,000.00 Combined Single Limit.
- 4) Required Insurance Provisions. Any and all insurance policies required herein shall include the following provisions:
 - a) Customer will provide TMUSA with proof of adequate insurance coverage evidencing that the coverage respects the indemnification clause contained in Article 6 of this Agreement.
 - b) All policies must provide that TMUSA be given thirty (30) days advance notice of material change in or cancellation of the above coverage; and
 - c) In the event of loss, any deductible is to be paid solely by the Customer.

ARTICLE 7 – ORDERS AND NOTIFICATIONS

- 7.1. Notifications. All orders, messages, or notifications relevant to the Agreement shall be sent by letter or by facsimile. Such notifications will be considered as having been delivered when they are handed personally, sent by registered mail, or sent by FAX to the address given below:



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TURBOMECA USA, INC.
2709 Forum Drive
Grand Prairie, Texas 75052
Manager of *Support By the Hour*
FAX: (972) 606-7668

Customer's Address:
CITY OF FRESNO
4941 East Andersen, Suite B101
Fresno, California 93727
FAX: (559) 454-2627

- 7.2. Orders for Replacement Equipment. Whenever Equipment needs to be replaced, repaired or overhauled, Customer shall notify TMUSA in writing and submit a purchase order containing the following information:
- 1) Aircraft and engine serial number from which Equipment is being removed;
 - 2) Part number, serial number and description of equipment being removed;
 - 3) Quantity required;
 - 4) Required delivery date;
 - 5) Reason for removal; and
 - 6) Address for replacement Equipment to be shipped.

ARTICLE 8 – DELIVERY BY TURBOMECA

- 8.1. Conditions of Shipment to Customer. Unless otherwise specified in an order, TMUSA will ship C.I.P. at TMUSA's expense, Covered Equipment and supplies in packaging which conforms to the manufacturer's specification for long distance airfreight, freight prepaid, to the following address (the "Customer Shipping Address"): **CITY OF FRESNO, 4941 East Andersen, Suite B101, Fresno, CA 93727**
- 8.2. Delivery Lead-Time.
- 1) Standard. In the case of scheduled removal of Covered Equipment pursuant to this Agreement, TMUSA will make every effort to ensure that Replacement Equipment delivery to Customer will take place two (2) days before the removal date declared by Customer on the purchase order for replacement, so long as the request for such Replacement Equipment was received by TMUSA at least sixty (60) days in advance of the scheduled removal date.
 - 2) Emergency "AOG". On occasions when an unscheduled failure occurs to Covered Equipment, and the aircraft is out of service due to the unscheduled failure, TMUSA will make every effort to have the replacement item(s) delivered to the freight carrier within twenty-four (24) hours following TMUSA's receipt of a written order (including FAX) from Customer.
- 8.3. Notification of Delivery. TMUSA will notify Customer of details of delivery of "AOG" Replacement Equipment.

ARTICLE 9 – RETURN OF EQUIPMENT TO TURBOMECA

- 9.1. Shipment to TMUSA. Customer shall ship, F.C.A., at its own risk and expense, to include all customs, duties and taxes, Covered Equipment and other Equipment in packaging which conforms to the manufacturer's

specification for long distance air freight, to TMUSA at the following address (the "TMUSA Shipping Address"):

TURBOMECA USA, INC.
2709 Forum Drive
Grand Prairie, Texas 75052

- 9.2. Documentation. Any Covered Equipment delivered to TMUSA pursuant to this Agreement is to be accompanied by COMPLETE AND UP-TO-DATE DOCUMENTATION.
- 1) Engines and Modules. For engines and modules, documentation shall include the engine or module logbook together with its appendices and, if Covered Equipment is to be repaired, the Customer's order and the engine removal report reference.
 - 2) Other Covered Equipment. For other Covered Equipment, documentation shall include the engine or module logbook together with its appendices and, if Covered Equipment is to be repaired, the Customer's order and a completed MMIR reporting form.
- 9.3. Promptness of Return. Any Covered Equipment delivered to TMUSA pursuant to this Agreement must be complete, including its documentation as stated in Article 9.2 above, and MUST BE SHIPPED TO THE TMUSA SHIPPING ADDRESS WITHIN FIFTEEN (15) DAYS counting from the day the replacement equipment is received at Customer's facility. Beyond this time limit (in the case of a return) or beyond the time limit specified in Article 13.6 (with respect to termination), Customer will be liable, without any further notice, to a daily fee equal to three hundred dollars (\$300.00) per day.
- 9.4. Costs Incurred on Return. It will be jointly decided that costs incurred by TMUSA for the examination, diagnosis and handling of Covered Equipment which has been returned to TMUSA with unconfirmed defects, will be invoiced separately, and paid by Customer.

ARTICLE 10 – INDEMNIFICATION, AIRWORTHINESS AND WARRANTY

- 10.1. TMUSA Equipment. Customer shall be liable for and shall indemnify and hold TMUSA harmless from and against all loss and/or damage to TMUSA Owned Equipment, when damage occurs during Customer's custody of the Equipment or components, except for normal wear or damage to the Equipment by reason of TMUSA's negligence. Should the TMUSA Owned Equipment (or any components or parts thereof) be lost or destroyed during Customer's custody of same, Customer shall pay TMUSA, on demand, the fair market replacement value of the Equipment or components or parts lost or destroyed. The fair market price will be jointly agreed upon.
- 10.2. Airworthiness. TMUSA warrants to Customer that:
- 1) All work performed by TMUSA will be in compliance with applicable published airworthiness specifications in effect at the time said work is performed;
 - 2) All work performed by TMUSA will be in compliance with applicable published directives and regulations of the Federal Aviation Administration in effect at the time the work is performed;
 - 3) All work performed by TMUSA will conform to standards of good workmanship which are customarily recognized in the industry at the time work is performed;



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- 4) Equipment, if sold or supplied to Customer by TMUSA, is either new or in serviceable condition at the time of delivery.
- 10.3. Warranty. Both parties agree that:
- 1) The rights and remedies expressly provided to Customer under this Agreement in respect of the performance of the Services shall be the sole rights and remedies of Customer.
 - 2) The only warranty granted by TMUSA in relation to the Covered Equipment and Services provided by TMUSA under this Agreement shall, for the duration of this Agreement, consist in the Standard Exchange or repair obligations set out in Article 5 herein.
 - 3) Upon expiration or termination of this Agreement, TMUSA grants and the Customer accepts in respect of any Covered Equipment and Services delivered under this Agreement the remaining warranties granted by TURBOMECA at Engine purchase, if any.
 - 4) This Agreement is separate from the Turbomeca limited warranty. No other agreement or understanding varying or extending the terms of the Turbomeca limited warranty shall be binding on TMUSA unless expressed in writing and executed by a duly authorized representative of TMUSA.

ARTICLE 11 – PRICING CONDITIONS

- 11.1. Fixed Rate. The current Fixed Rate per operating interval on Arrius Covered Equipment is \$95.61 USD PER HOUR (the "Fixed Rate") for 1.0 Ng cycles per hour. Cycles in excess of 1.0 Ng cycles per hour shall be invoiced to Customer at the rate of \$3.55 per 0.5 cycles per hour. The Fixed Rate is valid for the calendar year 2007 (January through December), and will be revised on the first of January of each new year, beginning January 1, 2008. The Fixed Rate per operating interval for the year 2008 (January through December) shall be \$122.81 for 1.0 Ng cycles per hour. Cycles in excess of 1.0 Ng cycles per hour shall be invoiced to Customer at the rate of \$3.55 per 0.5 cycles per hour. The Fixed Rate per operating interval for the year 2009 (January through December) shall be \$150.00 for 1.0 Ng cycle per hour. Cycles in excess of 1.0 Ng cycles per hour shall be invoiced to Customer at the rate of \$3.55 per 0.5 cycles per hour. Beyond December 31, 2009, the Fixed Rate shall be escalated based on the percentage of increase in standard exchange pricing.
- 11.2. Balance Between Hours/Cycles Declared and Hours/Cycles Logged. When Covered Equipment is returned to TMUSA, if the total hours/cycles declared and paid disagrees with the entries in the log book or log card, TMUSA and Customer will jointly agree to issue an invoice adjustment applying the Fixed Rate in effect at the time of adjustment to the difference in operating hours or cycles.
- 11.3. Premature Overhaul. If Covered Equipment is removed for overhaul at Customer's convenience prior to its scheduled TBO, Customer shall be invoiced for the difference in the actual hours and cycles consumed on the Covered Equipment up to the time of removal and the scheduled TBO, based on the current Fixed Rate.
- 11.4. Supplemental Charges for Abnormal Wear, Accident, Modification or Transformation.
 - 1) Exclusions. This Agreement specifically excludes from coverage the repair or replacement of Covered Equipment arising from failures of Covered Equipment due to causes beyond normal wear and tear, including, without limitation, failure of Covered Equipment which:



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- a) Has not been operated in accordance with the procedures and standards set forth in the Reference Documents;
 - b) Has not been maintained in accordance with the procedures and standards set forth in the Reference Documents;
 - c) Has been subject to misuses, accidents, incidents, abuse, or force majeure (acts of nature) by any party other than TMUSA;
 - d) Has not been properly stored, installed, maintained, utilized or packed for transport by any party other than TMUSA in accordance with the procedures and standards set forth in the Reference Documents;
 - e) Has suffered damage due to corrosion, erosion or foreign object damage, beyond acceptable manufacturer specifications, unless such damage was caused while the equipment was in the possession or control of TMUSA; or
 - f) Has suffered primary breakdown or deterioration of any component that was not acquired by Customer from TMUSA or other sources specifically approved by TMUSA in writing in advance of acquisition.
- 2) **TMUSA Discovery of Exclusion.** TMUSA shall advise Customer upon the discovery of any observed damage to Covered Equipment, which appears to have been caused by any of the reasons, set forth in SubArticle 11.4(1) above. In such cases, Customer shall be responsible for the parts and labor costs of any such repair or replacement of the Covered Equipment ("Excluded Costs") actually caused by any of the reasons set forth in SubArticle 11.4(1), and reimbursement to TMUSA of the Excluded Costs shall be made by customer in addition to other payments made pursuant to this Agreement. If TMUSA labor is required to repair or replace any Covered Equipment as a result of damage caused by any of the reasons set forth in SubArticle 11.4(1), Customer shall pay TMUSA the lesser of (1) TMUSA's actual direct labor expenses or (2) the TMUSA labor rates published in the current TURBOMECA Price Catalog.
- 3) **Invoicing and Adjustments Upon Discovery of Exclusion.** To take into account the normal wear and tear of some items which are covered in the hourly fee, a credit will be granted to Customer on the amount invoiced for each item that is prematurely replaced for abnormal wear, except in cases of modification of Covered Equipment. This credit will apply only to major items whose list price is greater than or equal to six thousand dollars (\$6,000.00), based on 2007 economic conditions. This value will be revised according to the current economic conditions as outlined in Article 11.1 above. The credit will be calculated as follows:

- If the item has a life limit:

$$\text{CREDIT} = \frac{\text{ITEM PRICE}}{\text{LIFE LIMIT}} \times \text{SERVICE LIFE LIMIT ELAPSED AT TIME OF ITS REPLACEMENT}$$

- If the item has no life limit:

$$\text{CREDIT} = \frac{\text{ITEM PRICE}}{\text{PRICE}} \times 35\% \times \frac{\text{TSQ}}{\text{TBO}}$$



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- 3) Discovery of Exclusion for Equipment on Loan. TMUSA shall advise Customer upon discovery of any observed damage to Equipment on loan which appears to have been caused by any of the reasons set forth in SubArticle 11.4(1) above. In such cases, Customer shall be responsible for the parts and labor costs of any such repairs or replacement of the Covered Equipment ("Excluded Costs") actually caused by any of the reasons set forth in SubArticle 11.4(1), and reimbursement to TMUSA of the Excluded Costs shall be made by Customer in addition to other payments made pursuant to this Agreement. If TMUSA labor is required to repair or replace any TMUSA Equipment as a result of damage caused by any of the reasons set forth in SubArticle 11.4(1), Customer shall pay TMUSA the lesser of (1) TMUSA's actual direct labor expenses or (2) the TMUSA labor rates as published in the current TURBOMECA Price Catalogue.

11.5. Miscellaneous Expenses.

- 1) Taxes. Customer shall be liable for all federal, state, local or foreign taxes (except income taxes) applicable to the sale, exchange, use, delivery or transportation of Covered Equipment or services provided hereunder and all duties, imports, tariffs and similar payments shall be paid by Customer.
- 2) Missing Parts. In the event Covered Equipment is delivered to TMUSA which is not complete because it is missing parts or components, TMUSA will replace any missing parts or components and shall be entitled to charge Customer no more than catalog list price (with any applicable discounts) for the same.
- 3) Labor and Transportation. Customer agrees to bear its reasonable and customary labor and transportation costs for the removal, installation, normal modular and "on condition" maintenance and troubleshooting.
- 4) Reimbursement for Non-Covered Services. TMUSA shall not be liable for, and Customer agrees to reimburse TMUSA on demand for any expenses, costs, or liabilities sustained in connection with the removal or replacement of Equipment or Covered Equipment in an aircraft or engine, other than those costs and expenses sustained by TMUSA in carrying out the services covered under this Agreement.

- 11.6. Purchase of Used Hours and Cycles. With respect to non-zero time Equipment to be covered by this Agreement, Customer will be required to purchase the used hours and cycles for a fee (the "Buy-In Fee") based on the number of hours and cycles consumed equivalent to the value of consumed hours and cycles on a Standard Exchange engine as listed in the TURBOMECA price catalog. Exhibit IV, which is incorporated herein by reference, sets forth the Customer's engines buy-in amount and payment terms with respect to any purchase of used hours and cycles under this Article 11.6.

ARTICLE 12 – CONDITIONS FOR PAYMENT

- 12.1. Payment Address. Customer shall send all payments due under this Agreement to:

TURBOMECA USA, INC.
Post Office Box 841250
Dallas, Texas 75284-1250

- 1) For amounts over one thousand dollars (\$1,000.00), a transfer of funds to TMUSA may be made electronically. Customer should contact TMUSA for funds transfer instructions should it elect to exercise this payment option.



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- 2) Each payment should indicate the Covered Equipment serial numbers and the invoice numbers that it covers.

12.2. Monthly Payments.

- 1) Customer will be invoiced and shall pay to TMUSA monthly, an amount equal to the Fixed Rate multiplied by the actual hours and cycles of Covered Equipment operation (the "Fixed Rate Charges") as set forth in the Monthly Report and specified in this Agreement, plus any supplemental fees and other charges that may be applicable in accordance with this Agreement.
- 2) Customer shall notify TMUSA in writing if an invoice is disputed within thirty (30) days of receipt of invoice. Invoices not disputed within this period shall be deemed to be valid.
- 3) In the event undisputed invoices are not paid within thirty (30) days, TMUSA may suspend coverage under this Agreement until full payment of the amount due has been received from Customer. If coverage is suspended, Customer shall not be entitled to claim any damage or loss resulting directly or indirectly from suspension. Furthermore, TMUSA shall be entitled to terminate this Agreement under Article 13 below.
- 4) Interest on all undisputed amounts past due thirty (30) days or more shall be invoiced and paid at the rate of eighteen percent (18%) per annum.
- 5) Customer shall be responsible for all sums, including attorney fees, reasonably incurred by TMUSA as a result of Customer's default in settling any undisputed invoice or invoice installment when due.

ARTICLE 13 – TERMINATION

- 13.1. Default By Customer. If the Customer substantially fails to comply with any of the terms or provisions of this Agreement within 30 days of written notice of any such default, TMUSA may terminate this Agreement by written notice (the "Cancellation Notice") to Customer, without any liability whatever on the part of TMUSA beyond termination, except liability arising from TMUSA's negligent or willful misconduct prior to termination.
- 13.2. Default By TMUSA. If TMUSA fails to substantially comply with any of the terms or provisions of this Agreement within 30 days of written notice by Customer of any such default, Customer may terminate this Agreement by written notice (the "Customer Cancellation Notice") to TMUSA.
- 13.3. Termination for Convenience. This Agreement may be unilaterally terminated by either party, without cause, upon sixty (60) days prior written notice (the "Termination Notice") to the other party; provided, however, in the sole event of non-appropriation relating to this Agreement, Customer shall have the right to terminate this Agreement at the end of any fiscal year of Customer (the "Fiscal Termination Notice"), in the manner and subject to the terms specified as follows: Customer shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall notify TMUSA of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of Customer which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of Customer or Customer's governing body to appropriate money for any fiscal year of Customer sufficient for the continued performance of this Agreement by Customer.



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- 13.4. Loss of Covered Equipment. In the event that the Covered Equipment is lost or destroyed, the Customer has the option to replace with like equipment of equal value based on hours and cycles. If not the Agreement will be deemed "Terminated" as of the date of loss.
- 13.5. Termination Date. This Agreement will terminate on a date (the "Termination Date") which will be the earliest to occur of the following: (1) immediately upon the Cancellation Notice, (2) immediately upon the Customer Cancellation Notice, (3) sixty (60) days after the Termination Notice, (4) end of Customer's fiscal year (defined in Article 13 hereof) upon Fiscal Termination Notice, or (5) unless renewed pursuant to Article 3 hereof, on the completion Date.
- 13.6. Customer Duties on Termination. Within five (5) business days after the Termination Date, Customer must return any and all Equipment and supplies belonging to TMUSA to the TMUSA Shipping Address, and pay in full the amount accrued and outstanding charges to TMUSA under this Agreement.
- 13.7. Final Settlement of Agreement.

- 1) TMUSA's Duties. If this Agreement is terminated for convenience, a pro-rated portion of the Fixed Rate Charges paid by Customer will be applied as a credit to the Customer's trade account at TMUSA.

- a) This credit shall be calculated as follows for each module and Fuel Control Unit or Hydro-Mechanical Unit:

$$\text{CREDIT} = \frac{70\% \text{ of equipment* Standard Exchange price (as per price list applicable at such time)}}{\text{TBO of Equipment*}} \times \text{TSO** of the Equipment at contract termination}$$

*Equipment shall be comprised of each module and FCU or HMU

**If the Equipment has not been overhauled, TSO shall be replaced by TSN.

Note: The TBO of "on-condition" equipment shall be ten thousand (10,000) hours.

- a) The credit shall be calculated as follows for each life-limited part:

$$\text{CREDIT} = \frac{70\% \text{ of Life limited Part price (as per price list applicable at such time)}}{\text{Potential in cycles of Life-Limited Parts***}} \times \text{CSN of the Life Limited Parts at contract termination}$$

- 13.8. Application of Credit. In the event Covered Equipment is lost due to an accident, the credit will first be applied to any undisputed expenses TMUSA has already incurred in supporting this Agreement. Any remaining credit will then be applied to any other outstanding undisputed invoices.

- 1) Any remaining credit will be applied as a credit to Customer's trade account with TMUSA. In the event Customer will no longer conduct business with TMUSA, Customer may request and TMUSA shall immediately remit a refund of any remaining credit due.

ARTICLE 14 - ASSIGNMENT AND TRANSFER

- 14.1. Sale or Transfer of Covered Equipment. In the event of a sale or transfer of Covered Equipment (the "Transfer") to a third party (the "Transferee"), TMUSA has the right, but not the obligation, to allow Transferee to obtain coverage under this Agreement.



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- 14.2. Notice of Intent to Transfer. Customer shall notify TMUSA of Customer's intentions to Transfer, and shall pay all sums normally due TMUSA up to date of Transfer, at least fifteen (15) days prior to Transfer.
- 14.3. Termination of Coverage. In the event that TMUSA does not offer the Transferee, or Transferee does not accept coverage under this Agreement, the notice by TMUSA to Customer, or Transferee to TMUSA, of any such decision shall be the Termination Notice and this Agreement shall terminate pursuant to Article 13.3 of this Agreement.

ARTICLE 15 – SOLE CONTRACT/AMENDMENTS

- 15.1. There are no other agreements or understandings, either oral or written, between TMUSA and the Customer affecting this Agreement. This Agreement cancels and supersedes all previous agreements between TMUSA and the Customer relating to the subject matters covered herein.
- 15.2. In the event Customer demands additional services which are not covered by this Agreement, the conditions for the performance of such services will be subject to a specific agreement.
- 15.3. No change, addition to or deletion of any portion of this Agreement shall be valid or binding unless the same is approved in writing by both Parties. The official text of this Agreement is in the English language. If this Agreement is translated into another language for the convenience of Customer or its personnel, the English version shall prevail in the event of a dispute arising out of the interpretation of this Agreement.

ARTICLE 16 – MISCELLANEOUS

- 16.1. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.
- 16.2. Further Actions. Each of the parties hereto agrees that they will perform all such other actions as may be necessary or reasonably appropriate to carry out the intent and purposes of this Agreement.
- 16.3. No change or modification of this Agreement shall be valid or binding upon the parties hereto unless such change or modification shall be in writing and signed by all the parties hereto. No waiver of any term or condition of this Agreement shall be enforceable unless it shall be in writing signed by the party against which it is sought to enforce. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by such other party.
- 16.4. Cost of Enforcement. If any action at law or in equity or any other proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.
- 16.5. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never constituted a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.
- 16.6. Assignability. The rights and benefits of either party under this Agreement may not be assigned, nor the duties hereunder delegated by such parties, without written consent, signed by the parties hereto.



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- 16.7. Headings. The Article and Section headings used in this Agreement are for reference and convenience only and shall not affect the interpretation of this Agreement.
- 16.8. Amendments. This Agreement, and any attachments hereto, set forth the complete understanding and agreement of the parties hereto and shall be amended only in writing, signed by both parties.
- 16.9. Gender. Whenever in this Agreement the context so requires, the male gender shall include the female and the neuter; the female gender shall include the male and the neuter; and the neuter shall include the male and the female.
- 16.10. Number. The use in this Agreement of the singular number shall include the plural, and the plural number shall include the singular wherever appropriate.
- 16.11. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.

ARTICLE 17 – CONFIDENTIALITY

Except as required by law, the parties hereby agree not to disclose the terms and conditions hereto, as well as the technical documentation, the operation rules, and all information of any nature whatsoever associated with this Agreement, to third parties, without prior written approval from the other Party hereto.

The obligation contained in this article shall survive the termination of this Agreement for ten (10) years.

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date set forth above.

TURBOMECA USA, INC.

CITY OF FRESNO

By:


J. RUSSELL SPRAY
President & CEO

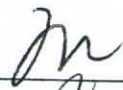

By:

Jerry Dyer, Chief of Police
Fresno Police Department

ATTEST:
Rebecca E. Klisch
City Clerk

By:

Deputy



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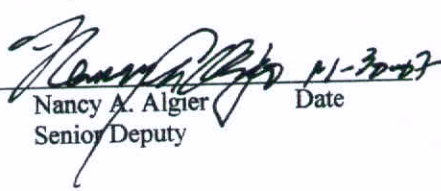
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APPROVED AS TO FORM:

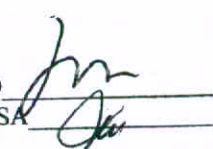
James C. Sanchez

City Attorney

By:


Nancy A. Algier
Senior Deputy

Date





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EXHIBIT I

COVERED EQUIPMENT

This Agreement covers the following Equipment:

Description	Aircraft S/N	Engine S/N	TSO	CSO
Arrius 2F Engine	1309	34334	0.0	1754.55

Each Arrius 2F Engine listed above includes the following repairable LRU items as defined in the Service Letter for Accessories and Equipment:

Fire Detection Harness

Control and Monitoring Harness

T4.5 Conformation Box

Valve Assembly

Right Injector Half-Manifold

Left Injector Half-Manifold

Preference Injector

Fuel Control Unit

Exhaust Pipe

Lubrication Unit

Oil Pump



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EXHIBIT II

**TURBOMECA USA, INC. AND
CITY OF FRESNO
LEASE AGREEMENT**

This agreement is entered into and made effective as of the _____ day of _____, between Turbomeca USA, Inc., Grand Prairie, Texas, a Delaware corporation ("TMUSA") and City of Fresno ("Lessee").

1. **LEASED EQUIPMENT.** TMUSA shall supply to Lessee, and Lessee shall lease from TMUSA for the purpose described herein below, certain TMUSA Owned Equipment (as defined in the Support by the Hour Agreement between the parties, dated _____, 2007 ("SBH Agreement")) turboshaft engines, modules and accessories, hereinafter referred to as "Equipment", and more particularly described as follows:

Rental Equipment:		Customer Property:	
Engine/Module Type:	Arrius 2F	Engine/Module Type:	Arrius 2F
Serial Number:		Serial Number:	
TSN/TSO:	TSO:	TSN/TSO:	
CSN		PO#	
Deposit Required:	N/A	Reason for Removal:	

- a) TMUSA shall, as its sole option, furnish fully functional, newly manufactured, remanufactured or used equipment which shall be deemed to be FAA certified airworthy.
2. **TERM.** This agreement shall be effective as of the date first above written and shall remain in full force and effect until the earlier of the expiration (_____) months or until terminated in accordance with Section 13 herein below.
3. **FEES.** As consideration for the rental of the Equipment, Lessee shall pay to TMUSA a rental as specified in Article 11.1 of the SBH Agreement, an amount equal to the aggregate of the following amounts:
- a) \$Per SBH Hourly rate in effect at the time of rental per hour of operation ("Hourly Charge") for each hour flown.
- b) If the number of engine cycles exceeds an average of 1.0 cycles per hour flown, the excess cycles will be charged at a rate of \$Rate in effect at time of rental per 0.5 cycles per hour.
- c) In the event Lessee does not deliver its customer owned property to TMUSA within ten (10) days of receipt of Equipment, Lessee shall pay a daily fee of \$300.00 per day for each additional day beyond the tenth (10th) day the property is not received at TMUSA in addition to the Hourly Charges specified in 3(a) above.
4. **INVOICING AND PAYMENT.**
- a) Lessee shall provide TMUSA, by facsimile transmission addressed to "TMUSA Accounting Manager" at (972) 606-7608, on or before the tenth (10th) day of each month, the operating hours and cycles for the Equipment for the immediately preceding month using the Monthly Operating Report, the form of which is attached hereto and made a part of as Exhibit 1 as specified in Article 6.4.1 of the SBH Agreement as Exhibit III thereof.
- b) In the event that Lessee fails to timely provide the report specified in 4(a) above or fails to accurately report the hours and cycles for the Equipment, Lessee will be subject to and liable for an additional



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charge equal to the greater of the amount due based on the accurate plus interest calculated pursuant to Section 4(d) below.

- c) Lessee shall pay and bear all federal, state and local sales, use, excise, personal property and other taxes and all governmental assessments, fees and charges imposed or in connection with any Lessee's use of any Equipment covered by the SBH Agreement. Lessee shall file any necessary returns connected herewith and shall reimburse TMUSA for any and all such charges paid by TMUSA with respect to such taxes, resulting from any late filing or payment due to Lessee's fault or negligence.
- d) TMUSA shall issue to Lessee an invoice, on a monthly basis, for payment at Lessee's billing address as set forth in the SBH Agreement. All undisputed amounts due TMUSA under this Agreement shall be due and payable to TMUSA within thirty (30) days following the invoice date. Any undisputed amounts not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month until paid.
- e) Lessee shall make all payments to TMUSA Texas at: 2709 Forum Drive, Grand Prairie, Texas 75052 or at such other place as TMUSA may designate in writing.

5. OWNERSHIP OF EQUIPMENT.

- a) This is an Agreement to lease only and shall not in any way be construed as a contract or agreement for the sale of Equipment.
- b) Lessee acknowledges and agrees that TMUSA is the owner of all Equipment leased hereunder, all of which shall remain subject to possession and control by TMUSA.
- c) Lessee further acknowledges and agrees that it has the possessory right to use and operate the Equipment, which possessory right shall be forfeited upon termination or expiration of this Lease Agreement in any manner.
- d) Lessee shall not sell, transfer, sublease or pledge as security any Equipment covered by this Agreement and shall neither make nor permit any alterations to Equipment without the prior written consent of TMUSA.
- e) Lessee shall provide to TMUSA prior written notice of any change in the ownership or identity of Lessee upon which TMUSA shall have the option of terminating this Agreement upon written notice to Lessee.
- f) Lessee shall be responsible for all risk of loss to Equipment during the term of this Agreement while in Lessee's care and custody.
- g) TMUSA may substitute, at its sole cost and expense, Equipment of like kind and quality for any of the Equipment leased under this Agreement. Lessee shall afford TMUSA unrestricted access to the Equipment.

6. RETURN OF EQUIPMENT.

- a) Upon the expiration or termination of the lease, Equipment shall be returned forthwith and without delay, at Lessee's expense, to TMUSA at a location designated by TMUSA.
- b) Lessee shall return Equipment in as good condition as when received by Lessee, ordinary wear and tear expected. If upon expiration or termination of the lease, Equipment is returned in unsatisfactory condition, after inspection by TMUSA, Lessee shall pay as an additional charge, any and all costs incurred by TMUSA to clean, repair and replace any damage to Equipment; provided that in no event shall such costs exceed the replacement value of the Equipment.
- c) Equipment is leased as complete and acknowledged as such by Lessee. Lessee shall return Equipment in like configuration. Lessee shall pay as an additional charge any and all costs incurred by TMUSA to replace missing parts.
- d) Lessee shall ship all Equipment to the TMUSA Shipping Address within fifteen (15) days following the expiration or termination of this Agreement for any reason. In the event Lessee fails or refuses to ship the Equipment within said (15) day period, an amount equal to three hundred dollars (\$300.00) per day



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shall be assessed against Lessee as liquidated damages, and not as a penalty, for each day until Equipment is shipped to TMUSA.

7. INSURANCE.

- a) Lessee shall, during the term of this Agreement, provide and maintain All Risk Physical Damage Insurance in the amount of full replacement value for all Equipment while in the custody of Lessee or in transit to and from TMUSA. Such insurance is to take effect at the time and place of shipment to Lessee and shall remain in effect until Equipment is returned to TMUSA.
- b) Lessee shall, during the term of this Agreement, maintain All Risk Ground and Flight Hull Insurance with respect to Equipment in an amount sufficient so that TMUSA will recover fully the amount of any loss of said Equipment or supplies. Lessee shall also maintain at all times Aircraft Bodily Injury and Property Damage Insurance, including passengers, in an amount of at least \$20,000,000.00 Combined Single Limit.
- c) Any and all insurance policies required herein shall include the following provisions:
 - (i) all policies must include TMUSA, and its affiliate, Turbomeca, S.A., a corporation organized under the laws of France, as additional named insured;
 - (ii) with respect to All Risk Physical Damage and All Risk Ground Flight Hull Insurance, policies are to be endorsed with Loss Payable Clause in favor of TMUSA, as its interests may appear;
 - (iii) all policies must provide Contractual Liability Insurance evidencing that coverage is provided as respects indemnification clause contained in Section 8 herein below;
 - (iv) Lessee and its respective insurance carriers each shall and hereby do waive any rights of subrogation they each may have against TMUSA and its affiliate Turbomeca, S.A., except where any such claim giving rise to possible subrogation is due solely and directly to the failure of Equipment where such failure is not due to any fault or negligence of the Lessee;
 - (v) the insurance required hereunder shall be primary and not contributing with any insurance carried by TMUSA;
 - (vi) all policies must provide that TMUSA will be given thirty (30) days advance notice of material change in or cancellation of the above coverage; and
 - (vii) in the event of loss, any deductible is to be paid solely by the Lessee.

8. **INDEMNIFICATION.** Lessee shall indemnify, defend and hold harmless TMUSA, its parent, subsidiaries and affiliates and each of their respective directors, officers and employees, from and against any and all liability costs, expenses (including attorneys' fees), claims or demands by Lessee or any third party of any nature whatsoever, except for such liability resulting solely from TMUSA's negligence, for damages by reason of the injury or death of any person or damage to any property belonging to Lessee, TMUSA or any third party arising out of Lessee's use, operation or control of Equipment.

9. OPERATION OF EQUIPMENT.

- a) Unless otherwise consented to in writing by TMUSA, Lessee shall operate Equipment only in North or Central America.
- b) Lessee shall permit only licensed and safe operators of the helicopter containing Equipment.
- c) Lessee shall not permit any Equipment to be used in violation of federal, state or municipal statutes, laws, ordinances, rules, regulations, or contrary to the provision of any applicable insurance policy.
- d) Lessee shall indemnify and hold TMUSA, its parent, subsidiaries and affiliates and each of their respective directors, officers and employees, harmless from any and all fines, forfeitures, damages or penalties resulting from violation of such laws, ordinances, rules or regulations.



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- e) Lessee shall notify TMUSA immediately of any and all accidents involving Equipment. Such notice shall be in writing and include full details of the accident and the names and addresses of all parties and witnesses. Lessee shall keep TMUSA and the insurer fully informed of all claims, suits or proceedings arising out of any accident involving leased Equipment. Lessee shall forward to insurer and TMUSA a copy of every demand, notice, summons or other process received in connection with any and all claims, suits or other legal proceedings resulting from an accident involving Equipment leased under this Agreement.

10. REPAIRS AND MAINTENANCE.

- a) Lessee shall be responsible for all expenses arising out of the operation of the Equipment (other than expenses arising as a result of TMUSA's failure to provide fully functional Equipment that is deemed to be FAA certified airworthy), including, without limitation, any Equipment failures caused by, but not limited to:
1. Lessee failing to operate Equipment in accordance with the application manual and procedures established by TMUSA;
 2. Lessee negligence with respect to Equipment;
 3. Lessee's failure to properly transport, store, install, maintain, or utilize Equipment in accordance with the current operating recommendations and directions of TMUSA;
 4. Equipment suffering damage due to the ingestion of a foreign body (FOD) or lightning strike; and
 5. Equipment suffering damage due to excessive erosion or corrosion.
- b) TMUSA shall invoice Lessee and Lessee shall be liable for and shall pay to TMUSA all amounts incurred by TMUSA to repair or overhaul Equipment due to any of the above-described causes.

11. RETURN OF LEASED EQUIPMENT.

- a) Prior to Lessee removing Equipment from Lessee's aircraft, the Lessee shall carry out the following checks in accordance with the Turbomeca Maintenance Manual;
- (i) Ground Run Checks
 - (ii) Vibration Checks in accordance with the Turbomeca Maintenance Manual
 - (iii) FCU or HMU Characteristics Checks;
 - (iv) Power Assurance Check; and
 - (v) Usual checks after last daily flight.
- b) Lessee shall record in the logbook power ratings as confirmed prior to Equipment removal.
- c) Lessee's failure to perform the power assurance check and/or record its results will be subject to and liable for an additional charge of \$2,000.00.
- d) On return of the Equipment, TMUSA will inspect equipment and, if applicable, invoice Lessee for any missing, replaced or damaged components or accessories.

12. TERMINATION. This Agreement may be terminated as follows:

- a) TMUSA may terminate this Agreement without further liability upon written notice to Lessee, with such termination having immediate effect in the event that Lessee fails or refuses to deliver within fifteen (15) days from the date of receipt of Equipment its owned equipment that is to be repaired or overhauled.
- b) TMUSA may terminate this Agreement without further liability, upon written notice to Lessee, with such termination having immediate effect, in the event that Lessee fails or refuses to provide its authorization



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to perform such repair or overhaul within ten (10) days following its receipt of TMUSA's cost estimate for such repair or overhaul of its owned equipment.

- c) TMUSA may terminate this Agreement without further liability upon written notice to Lessee with such termination having immediate effect, in the event that Lessee breaches any of the terms or conditions of this Agreement if TMUSA deems the Agreement or TMUSA's ability to recover equipment in jeopardy.
- d) Either party may terminate this Agreement for its own convenience and without further liability, upon thirty (30) days prior written notice to the other party.

Upon the expiration or termination of this Agreement, Lessee shall immediately return Equipment to TMUSA at the location provided by TMUSA. In the event that Lessee fails or refuses to return Equipment within fifteen (15) days, TMUSA may enter the premises where Equipment is located, with or without Lessee's consent, and remove or disable Equipment and Lessee shall be liable for any and all charges associated with TMUSA's actions taken to recover its Equipment.

- e) Upon the expiration or termination of this Agreement, Lessee shall immediately return Equipment to TMUSA at the location provided by TMUSA. In the event that Lessee fails or refuses to return Equipment within fifteen (15) days, TMUSA may enter the premises where Equipment is located, with or without Lessee's consent, and remove or disable Equipment and Lessee shall be liable for any and all charges associated with TMUSA's actions taken to recover its Equipment.

13. NON-ASSIGNABILITY. This Agreement is not assignable by the Lessee without TMUSA's consent.

14. ATTORNEY'S FEES AND COSTS. If any action at law or in equity or any other proceeding is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and necessary disbursements in addition to any other relief to which he or it may be entitled.

15. EXTRAORDINARY RELIEF Except for the obligation of payment, neither TMUSA nor Lessee shall be liable for non-performance caused by circumstances beyond its control, including but not limited to work stoppages, fire, civil disobedience, riots, rebellions and acts of God.

16. LIMITATION OF LIABILITY AND OF REMEDY AND DISCLAIMER OF WARRANTIES The liability of TMUSA with respect to this Agreement, or anything done in connection therewith such as the performance of breach thereof, or from the manufacture, installation or technical direction of installation, maintenance, repair or use of any Equipment covered by or furnished under this Agreement, whether in contract, in tort, under any warranty, or otherwise, is limited to the repair or replacement of the Equipment, parts, supplies, engines or LRU on which liability is based. THE WARRANTIES EXPRESSED IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, OR OTHERWISE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFIT AND CLAIMS OF THIRD PARTIES) HOWSOEVER BASED, WHETHER IN NEGLIGENCE, TORT, BREACH OF WARRANTY OR BREACH OF CONTRACT OR OTHERWISE.

17. NOTICES All notices required pursuant to this Agreement shall be mailed to: TURBOMECA USA, INC. at its office address, 2709 Forum Drive, Grand Prairie, Texas 75052, ATTN: Russ Spray President and CEO; and to the Lessee at the Lessee's billing address set forth in the SBH Agreement. All notices made pursuant to this Agreement will be effective (i) upon actual delivery if presented personally or sent by facsimile transmission with a receipt and confirmed by certified mail, return receipt requested, (ii) one (1) business day following delivery to an overnight courier or (iii) three (3) business days following deposit in the United States mail, if sent by certified, registered or express mail, postage prepaid.



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18. **SEVERABILITY** If any term or provision of this Agreement or the application thereof shall be invalid or unenforceable, the remainder of the Agreement or the application of such term or provision of this Agreement shall be valid and enforceable to the fullest extent of the law.
19. **BIND SUCCESSORS** This Agreement shall inure to the benefit of and be binding upon the respective parties and their successors in interest, assigns and legal representatives.
20. **ENTIRE AGREEMENT** This instrument shall constitute the entire Lease Agreement between TMUSA and Lessee and except as otherwise provided herein, may be amended only by a written instrument executed by both parties. No waiver of any term or condition of this Agreement shall be enforceable unless it shall be in writing signed by the party against which it is sought to enforce. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by such other party.
21. **GOVERNING LAW** This Agreement shall be interpreted in accordance with and governed by the laws of the State of California, U.S.A. without regard to its choice of law rules. The parties hereto agree that, upon the separate and express consent of the Lessee's governing body (i.e., the City Council), the respective controversy with respect to performance under the terms of the Agreement or arising out of the Agreement may be submitted to binding arbitration with a single arbitrator with the American Arbitration Association office in Dallas, Texas in accordance with its rules with such arbitration proceedings to be held in Dallas, Texas.

TURBOMECA USA, INC.

CITY OF FRESNO

DATE: _____

DATE: _____

ATTEST:
Rebecca E. Klisch
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
James C. Sanchez
City Attorney

By: _____
Nancy A. Algier Date
Senior Deputy



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EXHIBIT III
TURBOMECA USA, INC.
(FAX) 972-606-7608

Support By the Hour (SBH)® AGREEMENT
MONTHLY OPERATING REPORT

Date _____
Aircraft No. _____
Customer Name _____

Reporting Month _____
Engine Model _____
Telephone No. _____

Engine No. 1		Hours			Cycles		
	S/N	Start	End	Usage	Start	End	Usage
Engine							
MO1							
MO2							
FCU							

Engine No. 2		Hours			Cycles		
	S/N	Start	End	Usage	Start	End	Usage
Engine							
MO1							
MO2							
FCU							



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EXHIBIT IV
ENGINE TIMES AND BUY-IN AMOUNTS

<u>ENGINE S/N</u>	<u>TSO</u>	<u>CSO</u>	<u>BUY-IN</u>	<u>TERMS</u>
34334	-0-		\$10,077.00	Net 30
	Centrifugal Impeller	1754.55		
	HP Turbine Disc	1754.55		
	Power Turbine Disc	1944.3		

**Engine previously covered by FIRST LIFE Support By the Hour Agreement. Buy-in required for life-limited components only.*

